

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TIMOTHY KORNEGAY,

Plaintiff,

vs.

D. BAILEY, A. POPE, D. SAVAGE.

Defendants.

CASE NO. 12CV1616 JLS (MDD)

**ORDER SUA SPONTE VACATING
AUGUST 29, 2013 ORDER**

The Court, on its own motion, hereby **VACATES** its August 29, 2013 Order adopting Magistrate Judge Dembin's Report and Recommendation ("R&R") and granting Defendants D. Bailey, A. Pope, and D. Savage's ("Defendants") motion to dismiss Plaintiff's Complaint. (ECF Nos. 6, 14.)

On July 8, 2013, Magistrate Judge Dembin issued an R&R advising this Court to grant Defendants' motion to dismiss Plaintiff Timothy Kornegay's ("Plaintiff") Complaint. (ECF No. 14.) On August 2, 2013, this Court granted Plaintiff's motion for an extension of time and set August 28, 2013 as the deadline for Plaintiff to file objections to the R&R. (ECF No. 18.) On August 29, 2013, this Court issued an order adopting in full Magistrate Judge Dembin's R&R on the grounds that Plaintiff failed to file timely objections to the R&R and that the R&R was thorough, well-reasoned, and contained no clear error. (ECF No. 19.)

On September 3, 2013, the Clerk of the Court docketed Plaintiff's objections to the R&R. (ECF No. 20.) Although Plaintiff's response did not appear on the docket

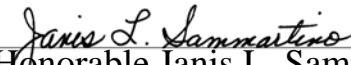
1 until September 3, 2013, his objections to the R&R were drafted and mailed on August
2 22, 2013, nearly one week before the expiration of the specified time to file.

3 Under the prison mailbox rule, a prisoner's court filings are generally deemed
4 filed as of the date that the prisoner delivers them to prison authorities for mailing.
5 *Houston v. Lack*, 487 U.S. 266, 270-71 (1988); *see also Huizar v. Carey*, 273 F.3d
6 1220, 1222 (9th Cir. 2001). Plaintiff certifies that he mailed his objections on August
7 22, 2013. Therefore, Plaintiff's objections to the R&R were timely submitted.

8 Accordingly, the Court **VACATES** its August 29, 2013 Order adopting
9 Magistrate Judge Dembin's R&R and dismissing Plaintiff's Complaint. Defendants
10 **SHALL FILE** a reply to the objections, if they wish, on, or before, September 19,
11 2013.

12 **IT IS SO ORDERED.**

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14 DATED: September 6, 2013

15 
16 Honorable Janis L. Sammartino
17 United States District Judge

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